COUNCIL AGENDA: 06-17-08
ITEM: 4 A

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Joseph Horwedel

SUBJECT: SEE BELOW

DATE: May 27, 2008

Approved Paul Krutt

Date 5/29/08

COUNCIL DISTRICT: 6
SNI AREA: BURBANK/DEL MONTE

SUBJECT: ANNEXATION OF BURBANK NO. 40 (PRIVATELY INITIATED)

RECOMMENDATION

It is recommended that the City Council adopt a resolution ordering the reorganization of territory designated as Burbank No. 40, which involves the annexation to the City of San Jose of approximately 2.78 acres of land located at the northwest corner of West San Carlos Street and Brooklyn Avenue and public right-of-way along West San Carlos Street, Brooklyn Avenue, and Topeka Avenue, and the detachment of the same from the appropriate special districts including Central Fire Protection, Area No. 01 (Library Services) County Service, Burbank Sanitary and County Lighting County Services.

OUTCOME

Upon completion of the annexation/reorganization proceedings, the territory designated "Burbank No. 40" shall be annexed into the City of San José.

BACKGROUND

On March 18, 2008, the City Council adopted an Ordinance, which prezoned the subject property from unincorporated County to CP Commercial Pedestrian Zoning District on one parcel along West San Carlos and to R-1-8 Single Family Residence District on three parcels along Brooklyn Avenue (File No.C07-065) to allow commercial uses. This is a privately initiated annexation to allow commercial uses and an existing parking lot for the use of the existing retail building. Under the City-County agreement, the annexation of the parcels to the City is necessary because of the façade and site modifications proposed for the existing retail development.

The proposed annexation consists of four parcels (Assessor's Parcel Numbers 274-17-085, -011, -012, -013) and the detachment of the same from the appropriate special districts including: Central Fire Protection, Area No. 01 (Library Services) County Services, Burbank Sanitary and County Lighting County Services. A map showing the affected territory is attached.

ANALYSIS

The reorganization is defined as 100 percent consent, since the property owner of the parcels signed the annexation petition. The site consists of four parcels and totals 2.78 acres of developed land and street right-of-way. The territory is considered uninhabited because there are fewer than eleven (11) registered voters in the affected area of the reorganization.

The proposed annexation would facilitate future development of the site with commercial uses on land that is within the City's Urban Service Area (USA). The parcels are adjacent to City territory to the east and west (see attached map). The proposed reorganization and annexation of the subject site conform to the City's General Plan and the Santa Clara County's LAFCO policies in that existing and future urban development should take place within cities.

The subject annexation takes place in a large, unincorporated county island of approximately 440 acres. This county island is not part of the County Island Annexation Program, as it is over 150 acres in size and does not qualify for the streamlined annexation process. While the subject annexation will split the county island into two pieces, it will not affect the larger unincorporated area with respect to current annexation procedures. Only areas under 150 acres as of January 1, 2000, qualify for the streamlined island annexation process.

Representatives of the Burbank Sanitary District have expressed concern over the proposed annexation and have requested that it be modified so that the existing pocket would not be split in two, by retaining a small portion of West San Carlos Street as County jurisdiction. In response to these concerns, staff reviewed alternatives to the proposed annexation. The result of annexing the subject parcels without the remainder portion of West San Carlos Street would leave either 1) a 200 foot stretch of road under County jurisdiction with another 230 feet under split County/City jurisdiction or 2) a 100 foot stretch of road under County jurisdiction with another 70 feet under split County/City jurisdiction. Either of these configurations would perpetuate existing jurisdictional boundaries that split West San Carlos and create very short segments of the roadway that would remain under County maintenance while most of the street lies within City jurisdiction. Additionally, staff confirmed with the Department of Public Works that completion of this annexation does not substantially alter maintenance issues for the sanitary sewer system, as the sewer line along West San Carlos already flows east from the unincorporated area into San José's jurisdiction (and from San Jose jurisdiction to the west as well). Therefore the proposed annexation will not cause any real changes to the operation and maintenance of the sewer lines, which are already shared by the City of San José and the Burbank Sanitary District.

Santa Clara County Local Agency Formation Commission (LAFCO) street annexation policies (attached) state that "the annexation proposal shall be designed to include a continuous section of roadway sufficient in length to allow maintenance and policing of the street by a single jurisdiction". The policies further state that "Appropriate segments of roads . . . adjacent to or within the proposed annexation should be included in the city boundaries to ensure logical boundaries and efficient provision of public services" and that "annexation of existing short segments of county maintained

road to provide a single-agency oversight of a full-width section of the road shall be accomplished in the most practical manner." Private annexation proposals are the simplest method for annexing existing short segments of county maintained road such as currently exists along West San Carlos.

In light of the service area and annexation policy considerations, staff recommends annexing the street rights-of-way as proposed.

Proceedings are being conducted under provisions of the California Government Code Section 56757, which grants the City conducting authority and allows the completion of reorganization in Santa Clara County without Local Agency Formation Commission (LAFCO) approval. Before approving the reorganization proposal, the City Council is required to make certain findings as listed below. Staff comments follow each finding.

1. The unincorporated territory is within the City's Urban Service Area as adopted by LAFCO. *The site is located within the City's Urban Service Area.*

2. The County Surveyor has determined the boundaries of the proposal to be definite and certain and in compliance with LAFCO Annexation Policies. *The County Surveyor has certified the boundaries of the reorganization.*

3. The proposal does not split lines of assessment or ownership. *All affected parcels are being reorganized in their entirety.*

4. The proposal does not create islands or areas in which it would be difficult to provide municipal services. *No such islands are being created. The completion of reorganization proceedings would result in the reduction of a pocket of unincorporated territory.*

5. The proposal is consistent with the City's adopted General Plan. *The proposed annexation is consistent with the City's adopted policy in that existing and future urban development should be located within cities.*

6. The territory is contiguous to existing City limits. *The area proposed to be reorganized is contiguous to the City limits on two sides as shown on the attached map.*

7. The City has complied with all conditions imposed by LAFCO for inclusion of the territory in the City's Urban Service Area. *No such conditions have been imposed.*

EVALUATION AND FOLLOW-UP

As noted in the Background, on March 18, 2008, the City Council prezoned the subject site to CP Commercial Pedestrian Zoning District on one parcel along West San Carlos and to R-1-8 Single Family Residence District on three parcels along Brooklyn Avenue. The Council initiated the annexation/reorganization on May 20, 2008. No specific Council direction was made to staff for follow-up action prior to Council ordering of the subject annexation. Following ordering of the annexation on June 17, 2008, the Council would adopt the reorganization by a resolution.

POLICY ALTERNATIVES

Alternative #1: Direct the applicant to provide a map and legal description for an annexation area that connects to the subject site from the east or west but does not include the entire length of West San Carlos Street.

Pros: Would respond to the request made by the Burbank Sanitary District.
Cons: This alternative creates service challenges and does not follow the LAFCO street annexation policies.
Reason for not recommending: This alternative would create even smaller sections of street right-of-way under County control where there is an opportunity to bring them under the sole jurisdiction of the City. Staff has also determined the proposed annexation will not have any impact upon current sewer operation and maintenance.

PUBLIC OUTREACH/INTEREST

- ☐ **Criteria 1**: Requires Council action on the use of public funds equal to $1 million or greater. **(Required: Website Posting)**
- ☐ **Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy and the Cortese-Knox-Hertzberg Local Government Reorganization Act 2000. Mailed noticing for 100% Consent Annexation (Initiation) is not required. A notice of the prezoning was distributed to the owners and tenants of all properties located within 500 feet of the project site and was posted on the City website. The prezoning was also published in a local newspaper, the Post Record. This staff report is posted on the City's website. Staff has been available to respond to questions from the public

Staff received an inquiry from the Administrator of the Burbank Sanitary District, one of the special districts to be detached from the subject site. They expressed concerns that this annexation would split the main territory of their district in two and that the majority of their sewer service runs through the line along West San Carlos that is to be annexed. They further expressed interest in an alternative annexation boundary that would not include the entire remaining unincorporated portion of West San Carlos. The issues raised by the Burbank Sanitary District are discussed in the Analysis section of this memorandum. (Initial letter from the District is attached)

Opposition to the proposed annexation by the Burbank Sanitary District could trigger the need to drop this item and renotice for a public hearing with protest proceedings. However, the Sanitary District is not a landowner in this territory and cannot actually oppose the annexation decision through the protest proceedings they could trigger. The landowner consents to the annexation; therefore, the need for protest proceedings would delay the process but not provide any additional opportunity for the Burbank Sanitary District to influence the outcome.

COORDINATION

This project was coordinated with the Department of Public Works, Fire Department, Police Department, Environmental Services Department and the City Attorney.

FISCAL/POLICY ALIGNMENT

This project is consistent with applicable General Plan policies that urban development should take place within the Urban Service Area.

COST SUMMARY/IMPLICATIONS

Not applicable.

BUDGET REFERENCE

Not applicable.

CEQA

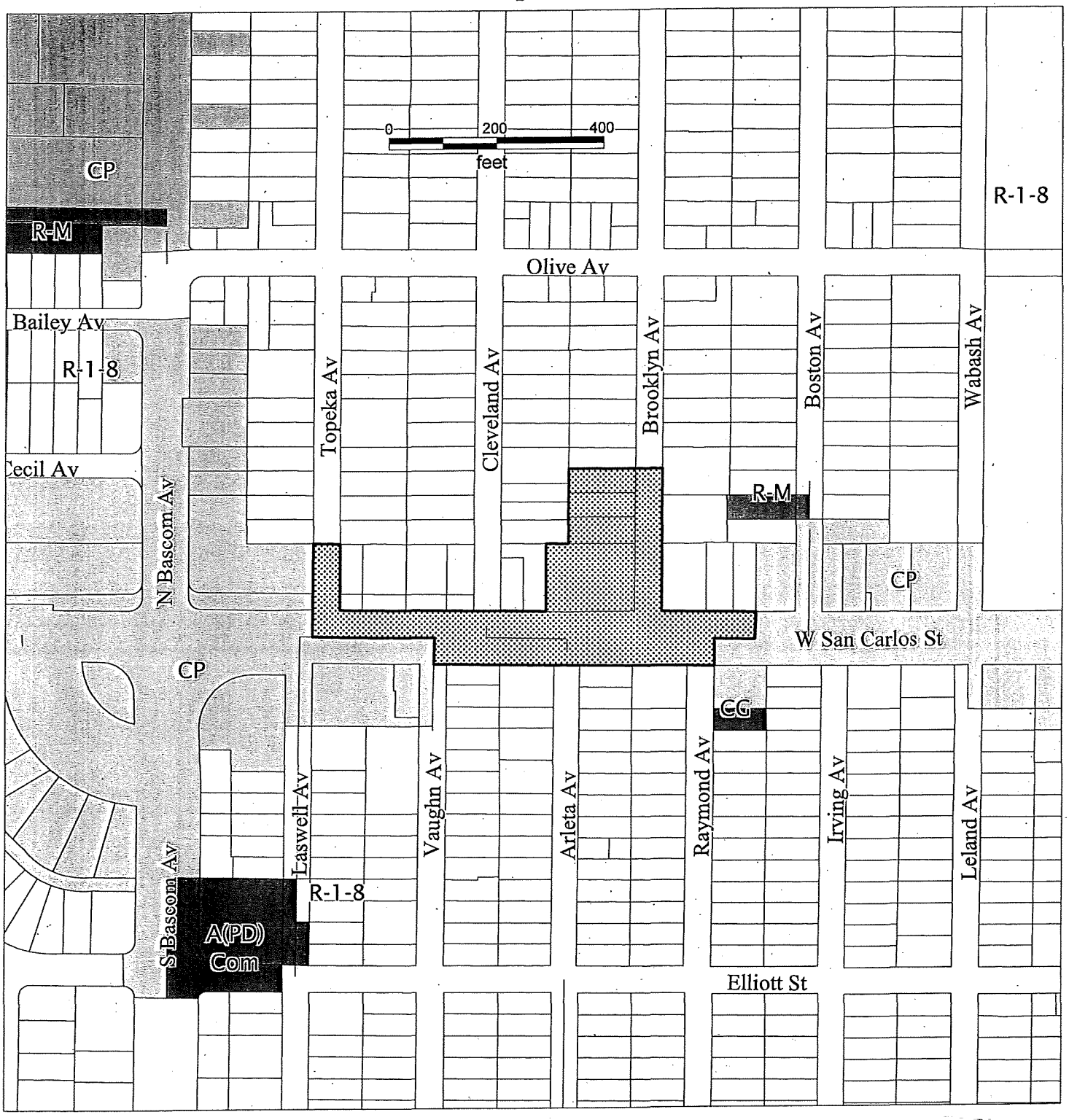
CEQA: Final EIR entitled, "San Jose 2020 General Plan EIR" adopted August 16, 1994, Resolution No. 65459, (C07-036).

Andrew Crabtree
for JOSEPH HORWEDEL, DIRECTOR
Planning, Building and Code Enforcement

For questions please contact Rich Buikema at 408-535-7835.

cc: Will Judy, 99 Cents Only Stores, 4000 Union Pacific Ave, Commerce CA 90023-3202

BURBANK 40
Location Map with Zoning



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Map Created On:
4/25/2008

Noticing Radius = 500 Ft

Prepared by the Department of Planning, Building, and Code Enforcement
City of San Jose, California

Joseph Horwedel, Director

District: 6
Quad: 82

CITY OF
SAN JOSE
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C. STREET ANNEXATION POLICIES

1. Cities will be required to annex entire street sections whenever possible.
2. When streets are used as a boundary for an annexation, the annexation proposal shall be designed to include a continuous section of roadway sufficient in length to allow maintenance and policing of the street by a single jurisdiction. Annexation of full-width sections normally shall be made in increments of not less than one thousand feet, or the distance between two consecutive intersections, where 50 percent or more of the frontage on both sides of the street in said increment has been or is to be included in the city. This policy shall not supercede other provisions in State law.
3. Pursuant to Government Code Section 57329, annexation of existing short segments of county maintained road to provide single-agency oversight of a full-width section of the road shall be accomplished in the most practical manner.
4. Appropriate segments of roads, freeways, highways, expressways, private roads or railroad rights-of-way, adjacent to or within the proposed annexation should be included in the city boundaries to ensure logical boundaries and efficient provision of public services.
5. When a street is the boundary line between two cities, the centerline of the street may be used as the boundary. Such street annexations shall occur in increments as described in Policy 2, above.
6. Half-street annexations will not be approved except as provided in Policies 3 and 4, above, unless otherwise provided by State law.

Burbank Sanitary District

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Cupertino, CA 95014
Phone (408) 255-2137 Fax (408) 253-5173
www.burbanksanitary.org
"Serving the Burbank Community since 1940"

May 22, 2008

City of San Jose
Attn: Justin Fried
Planning Dept. 3rd Floor
200 East Santa Clara Street
San Jose, CA 95113

RE: Annexation of Burbank No. 40
Consent to Waiver of Protest Proceedings

Dear Mr. Fried,

In response to your letter dated, April 24, 2008, the Burbank Sanitary District (BSD) does not wish to waive any of its right to protest proceedings. District staff has spoken with you and representatives at LAFCO regarding the proposed annexation and is still in the process of gathering information.

The District Board of Directors has instructed staff to compile additional data and prepare a report to the Board, to be presented at their next scheduled meeting, June 5, 2008.

Please keep the District informed of any developments in this matter and our staff will be in touch with you to discuss additional items in the coming weeks. Thank you for your assistance on this proposed annexation.

Sincerely,

Steve J. Machida
District Manager and Engineer

Cc: Lisa Post, BSD Board President